

## R E M A R K S

Claims 1 to 12 are in the case.

With this amendment, Applicant has revised Claims 1, 11 and 12 to recite that the apertures comprise elongated slots. Claim 2 is being cancelled while Claim 3 has had its dependency changed.

Reconsideration of the Examiner's rejection of the claims under 35 USC 103 is respectfully requested in view of the following comments.

In the Office Action, the Examiner has rejected Claims 1 to 12 under 35 USC 103 (a) as allegedly being unpatentable over JP789 in view of United States Patent 4,294,037. In this regard, the Examiner has relied on JP789 to teach a container having a bottom wall and a side wall extending upwardly therefrom with a soil support insert spaced from the bottom wall to define a space between the bottom wall and soil support insert. The Patentee teaches a plurality of apertures in the downwardly extending wall. However, the Examiner has also stated that JP789 is silent about an air-space between an upper surface of the water and the soil support member and a non-soil growing medium within the cavity, the non-soil growing medium including mycorrhizal fungi.

The Examiner's assertion that it would have been obvious to one of ordinary skill in the art to have an air-space between an upper surface of the water and the soil support member of JP789 depending on how much water is being watered in the container is respectfully traversed. This logic is not followed since there cannot be an air-space as all the space is occupied by the non-soil growing medium (the compost

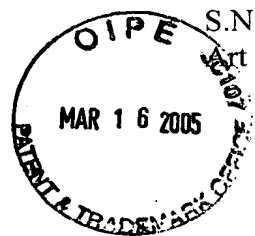
material from a fermented raw garbage). Accordingly, it cannot be obvious to provide such an air-space.

The Examiner has relied on the 037 reference which teaches employing a non-soil growing medium including mycorrhizal fungi. This patent teaches a process for the production of mycorrhizal fungi which comprises growing the fungus on plant roots in a nutrient film culture. It is not seen as to where this is pertinent to the instant application or how it would make up for the deficiencies of the JP789 reference. Why would one put a non-soil growing medium in the cavity of JP789 and where is the teaching from the secondary reference to make this combination. The primary reference teaches a soil within the cavity.

Also with respect to Claim 1, Applicant has amended the claim to define the slots as being elongated members. This is not the case with JP789 which clearly states that there are several small holes drilled in the wall of the plant storage unit. Any hole drilled is inherently circular in nature.

The rejection of the dependent claims is also respectfully traversed. With regard to Claim 4, the Examiner has stated that the secondary reference teaches peat or rockwool as a soil growing medium. However, as previously pointed out, the non-soil growing medium is not in the cavity and the Examiner's comments are believed to rely on ex post facto analysis.

Again, with regard to the Examiner's rejection of Claims 9 and 10 as allegedly obvious, the prior art is completely silent as to the teachings of these claims and the Examiner's objection based on obviousness is respectfully traversed.



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With regard to Claims 11 and 12, the rejection is again respectfully traversed on the grounds set forth above with regard to Claim 1.

In view of the above, it is respectfully submitted that this application is now in order for allowance and such action is respectfully solicited.

Respectfully,

Eric Fincham  
Reg. 28,201

#### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail in an envelope addressed to: Mail Stop - Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on *March 16, 2005*

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